



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: C. Martin Company, Inc.

File: B-228552

Date: January 20, 1988

DIGEST

1. Protest that the contracting agency's evaluation and scoring of technical proposals is suspect because the agency's questions requesting clarification of protester's initial proposal contained miscited sections and incorrectly identified page and paragraph numbers is untimely, because it was required to be filed before the due date for revised proposals but was raised only after the protester lost the competition.

2. Protest that the contracting agency's technical evaluation of the successful offeror was improper because the firm is in bankruptcy is denied, because technical evaluation focuses on the proposal itself, whereas the bankruptcy's effect concerns the offeror's ability to perform as proposed. Moreover, the contracting officer considered the matter in finding the offeror responsible--the fact that a firm is undergoing bankruptcy does not require a finding of nonresponsibility--and the General Accounting Office will not review an affirmative responsibility determination except in limited circumstances.

DECISION

C. Martin Company, Inc., protests the award of an indefinite quantity job order contract to Alliance Properties, Inc. (ALLPRO), under request for proposals (RFP) No. N62474-86-R-1401, issued by the Department of the Navy for construction and repair work at various locations in the China Lake, California, area. The protester basically contends that the Navy improperly evaluated the technical and price proposals and that contract award should have been made to Martin based on its lower-priced, technically acceptable proposal.

We dismiss the protest in part and deny it in part.

The RFP advised that, in evaluating proposals, emphasis would be placed on the offeror's technical ability to manage

projects and on price reasonableness, but that greater weight would be given to price. Under the RFP's technical evaluation criteria, the following factors were to be considered: management ability, experience, technical staff capability, subcontractor support capability, and fiscal, management and technical support. The RFP also advised that award would be made to the responsible offeror whose offer, conforming to the RFP, would be most advantageous to the government, price and other factors considered.

Ten proposals received technical scores ranging from ALLPRO's highest-ranking score of 85 points (out of a possible 100 points) to a low of 7.8 points. Martin's technical proposal received a score of 61 points and was ranked fourth. After submission of revised technical proposals, ALLPRO's score and rank remained unchanged. Martin's score increased to 72.4 points, but it retained its fourth place ranking.

After an evaluation of revised price proposals, ALLPRO's \$19,489,000 price proposal was ranked third and Martin's \$19,313,000 low price proposal was ranked first. Based upon a final evaluation of proposals, weighing price at 60 percent and technical quality at 40, ALLPRO was ranked first and Martin third. A preaward survey resulted in an affirmative responsibility finding and, as recommended by the survey report, contract award was made to ALLPRO on October 14, 1987.

Martin first contends that the Navy's evaluation and scoring of technical proposals is suspect because the questions the Navy posed to the firm based on Martin's initial proposal contained miscited sections and incorrectly identified page and paragraph numbers. This allegation is untimely, however. The questions were sent to Martin on July 10, with responses due by July 27. Under our Bid Protest Regulations, Martin was required to protest the contents of the questions before the due date for revised proposals. 4 C.F.R. § 21.2(a)(1) (1987). Since this protest issue was not raised until after Martin lost the competition, it is dismissed as untimely.

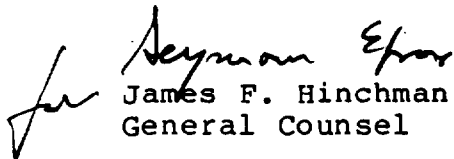
Martin also protests that the evaluation of ALLPRO's technical proposal was flawed by the Navy's failure to account for the fact that ALLPRO has been in bankruptcy since January of 1987, which Martin maintains will have a serious impact on that firm's ability to obtain and manage subcontractors and to support and complete projects on a timely basis.

We deny the protest on this issue. The technical evaluation of a proposal necessarily focuses on the proposal

information itself, and the Navy rated ALLPRO's offer high in all technical areas. ALLPRO's financial position in terms of its actual ability to perform the contract as proposed is a matter related to the firm's responsibility, not the technical evaluation. See Federal Acquisition Regulation § 9.104; Nova International, Inc., B-227696, Sept. 21, 1987, 87-2 CPD ¶ 284. Because a contracting officer's determination that an offeror is capable of performing a contract is a subjective judgment that is not readily susceptible of reasoned review, our Office will not review an affirmative determination of responsibility absent a showing of fraud or bad faith, or that definitive responsibility criteria in the solicitation were not met. 4 C.F.R. § 21.3(f)(5).

The record indicates that the affirmative preaward survey finding included consideration of ALLPRO's financial situation, and the firm's bankruptcy filing, and that the contracting officer determined, based on the preaward survey, that ALLPRO was responsible. Martin's disagreement with that determination does not establish that it was based on bad faith or fraud. In this respect, we have recognized that the mere fact that a contractor is undergoing bankruptcy does not require a finding of nonresponsibility. Security America Services, Inc., B-225469, Jan. 29, 1987, 87-1 CPD ¶ 97.

The protest is dismissed in part and denied in part.


James F. Hinchman
General Counsel